

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

-----X
In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO
et al.,

(Jointly Administered)

Debtors.¹
-----X

**INFORMATIVE MOTION OF THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO REGARDING STATEMENTS OF AMBAC ASSURANCE
CORPORATION CONCERNING MILLIMAN ACTUARIAL REPORTS**

To the Honorable United States District Judge Laura Taylor Swain and the Honorable United States Magistrate Judge Judith Gail Dein:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17- BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17- BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations

(“PROMESA”),² respectfully submits this informative motion concerning recent statements to the Court by Ambac Assurance Corporation (“Ambac”). The Oversight Board respectfully states as follows:

1. Between June 3 and June 8, 2021, Ambac twice represented to the Court that Milliman, Inc. (“Milliman”), the actuary for the Commonwealth, informed Ambac the Oversight Board has caused Milliman to withhold publishing valuation reports for 2018 (the “Milliman Reports”). Specifically:

- a. On June 3, 2021, in the *Objection of Ambac Assurance Corporation, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claim Asserted by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth’s Title III Case*, Ambac (through Milbank LLP as counsel) told the Court, “Milliman has represented that the determination to hold back the Milliman Reports has been made by the Board.” ECF No. 16884 in Case No. 17-bk-3283, ¶ 15.
- b. On June 8, 2021, in *Ambac Assurance Corporation’s Status Report Concerning Ambac’s Urgent Motion to Compel Milliman Inc. to Comply with Subpoena Issued Pursuant to Court’s January 13, 2021 Order Authorizing Rule 2004 Discovery*, Ambac (through Glenn Agre Bergman & Fuentes LLP as counsel) told the Court, “Milliman [noted] the Board would make the determination when they [i.e., the Milliman Reports] will be published.” ECF No. 16904 in Case No. 17-bk-3283, ¶ 10.

2. Both statements are unfounded and false. Tellingly, Ambac never raised any such concern with the Oversight Board despite multiple conferences concerning Ambac’s Rule 2004

² PROMESA has been codified at 48 U.S.C. §§ 2101–2241.

discovery requests seeking, among other things, the Milliman Reports. Ambac's statements therefore appear designed to imply the Oversight Board has "interfered" with publication of the Milliman Reports, which is false. Further, in a written representation to the Court, Milliman has directly denied Ambac's assertions that it made such statements. *See Milliman's Response to Ambac's Status Report Regarding Ambac's Motion to Compel*, ECF No. 16914 in Case No. 17-bk-3283, at 3.

3. On June 10, 2021, counsel to the Oversight Board told counsel to Ambac the statements were false and asked Ambac either to provide the factual basis for its assertions or to notify the Court it was withdrawing its false statements about the Oversight Board. Exhibit A [June 10, 2021 Letter from M. Dale to A. Glenn and A. Miller].

4. On June 11, 2021, counsel to Ambac responded. Exhibit B [June 11, 2021 Letter from A. Glenn to M. Dale]. Counsel to Ambac did not identify a single instance where Milliman or anyone else said the Oversight Board was delaying the Milliman Reports in any respect. *Id.* Instead, counsel to Ambac made two assertions, both of which are baseless.

5. *First*, counsel to Ambac claims to have inferred Milliman's alleged reference to the "government" during teleconferences meant "the Oversight Board." *See* Ex. B at 1, 2. Even if that explanation were credible, it is baseless: the Oversight Board specifically and affirmatively denied delaying the Milliman Reports in any respect a month earlier via correspondence to Ambac's lawyers. *See Exhibit C* [April 9, 2021 Letter from M. Dale and M. Pocha to J. Hughes] at 2 ("[T]he FY2018 Milliman reports will be finalized after the ERS, JRS, and TRS FY2018 financial statements are finalized. ***AAFAF and the retirement systems are not delaying that process (nor is the Oversight Board); to the contrary, they are facilitating them.***") (emphasis added).

6. *Second*, counsel to Ambac now claims it had "raised the issue" of Milliman's alleged statements concerning the Oversight Board during a meet-and-confer on April 5, 2021, during which

Ambac now says it told the Oversight Board it “had learned” from “other parties” the Milliman Reports “were being held back.” Ex. B. at 1. That is false. On April 5, counsel to Ambac said a “party” had accused AAFAF—not the “government,” and not “the Oversight Board”—of delaying publication of the Milliman Reports. Ex. C at 2. When counsel to AAFAF and the Oversight Board asked Ambac to identify the “party” making that accusation, Ambac refused. *Id.* Plainly, saying an unidentified “party” accused someone else of causing a delay did not “raise the issue” of Milliman’s alleged statements concerning the Oversight Board—statements counsel to Milliman specifically denies making in any event. See Exhibit D [June 14, 2021 Email from F. Harrison to A. Glenn].

7. On June 15, 2021, counsel to the Oversight Board noted the above to Ambac’s lawyers and informed them that, as it was clear they would not correct the record, the Oversight Board would. Exhibit E [June 15, 2021 Letter from M. Dale to A. Glenn and A. Miller].

8. On June 16, 2021, counsel to the Oversight Board conferred by telephone with counsel to Ambac. The Oversight Board told Ambac’s lawyers it would be filing an informative motion to correct the record, and now respectfully submits this informative motion.

9. The Oversight Board also respectfully requests the Court disregard Ambac’s false statements identified above in paragraph 1.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Oversight Board respectfully requests the Court take notice of the foregoing.

Dated: June 16, 2021
New York, NY

Respectfully submitted,

/s/ Margaret A. Dale

Martin J. Bienenstock (*pro hac vice*)

Margaret A. Dale (*pro hac vice*)

PROSKAUER ROSE LLP

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

Email: mbienenstock@proskauer.com

Email: mdale@proskauer.com

*Attorneys for the Financial Oversight and
Management Board as representative for the
Debtors*

/s/ Hermann D. Bauer

Hermann D. Bauer USDC No. 215205

O'NEILL & BORGES LLC

250 Muñoz Rivera Ave., Suite 800

San Juan, PR 00918-1813

Tel: (787) 764-8181

Fax: (787) 753-8944

Email: hermann.bauer@oneillborges.com

*Co-Attorneys for the Financial Oversight and
Management Board as representative for the
Debtors*

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer